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How The Supreme Court Ended Up Quoting Eminem - And What It Means For Free Speech And Victims Of Digital Violence

The Supreme Court cited Eminem lyrics in a case they heard on Monday.

By Adam Fleischer

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Eminem's lyrics -- at times rampant with references to violence, particularly against his ex-wife, Kim -- have long been controversial.

And now, in a case being heard by the Supreme Court this week, one man has used Em's words to help explain his own actions.

Things started back in 2010, when a Pennsylvania man named Anthony Elonis hit a rough patch: His wife and children left him, and he lost his job. He soon began lashing out on Facebook, writing posts that were -- as his lawyers described in their petition that was ultimately granted by the Supreme Court -- "sometimes violent," and aimed at his wife.

Elonis was arrested in 2010 and was sentence to 44 months behind bars because the language in his posts was interpreted as "true threats" -- which is the sort of language that is not protected by the First Amendment.

But they weren't direct threats, he argued. He was merely expressing himself -- just like Eminem.

Elonis and his lawyers claim that the words were his "fictitious lyrics," no different from Em's rhymes, and that what's important is how he intended them (not as threats, he says), not how someone else might read them.

"At trial, [Elonis] testified that he was influenced by the rap artist Eminem's songs Guilty Conscience, Kill You, Criminal, and 97 Bonnie and Clyde as influences," the petition from earlier this year reads. "Eminem repeatedly fantasized in songs about killing his ex-wife. E.g., Eminem, Kill You, on The Marshall Mathers LP...[and] 97 Bonnie and Clyde, on The Slim Shady LP."

They referenced Slim Shady "to make the point that they involve similar themes and even language," Elonis' lawyer, John P. Elwood, told MTV News in July. "We do so to make the point that statements such as Mr. Elonis' can reasonably be meant simply, as he testified at trial, as a catharsis to help him deal with an incredibly stressful time of his life."

Their use of Em parallels don't end there, though. Beyond posts suggesting violence towards his wife, Elonis also wrote this, about a potential school shooting, in 2010:

That's it, I've had about enough
I'm checking out and making a name for myself

Enough elementary schools in a ten mile radius

to initiate the most heinous school shooting ever

imagined

And hell hath no fury like a crazy man in a

kindergarten class

The only question is . . . which one?

In lower court, prior to reaching the the Supreme Court, he "testified that his post was a reference to an Eminem song in which the rapper coarsely criticized his ex-wife and fantasized about participating in the Columbine shootings," according to the petition. This is reference to "I'm Back," off of Eminem's The Marshall Mathers LP. The petition directly quotes the following lyrics from the song:

I take seven (kids) from (Columbine), stand 'em all in line
Add an AK-47, a revolver, a nine

a MAC-11 and it oughta solve the problem of mine

and that's a whole school of bullies shot up all at one time

Cause (I'mmmm) Shady, they call me as crazy

as the world was over this whole Y2K thing

So, will the Eminem Defense -- which has helped the case reach the highest court in the country -- convince the Supreme Court? Time will tell, but they began to voice their opinions when hearing the case on Monday.

"This sounds like a road map for threatening a spouse and getting away with it," Justice Samuel A. Alito Jr. said, according to the *Washington Post*. "So you put it in rhyme and you put some stuff about the Internet on it and you say, 'I'm an aspiring rap artist.' And so then you are free from prosecution."

Chief Justice John Roberts, meanwhile, quoted Em's "'97 Bonnie & Clyde" -- where he talks about killing his wife -- citing lyrics like, "Da-da make a nice bed for mommy at the bottom of the lake."

"Under your standard, could that be prosecuted?" Roberts asked the Deputy Solicitor General, Michael Dreeben, according to Politico.

"No," he said. "Eminem said it at a concert where people are going to be entertained. This is a critical part of the context. It wasn't as if he stated it to her in private or on a Facebook page after having received a protection from abuse order."

Roberts continued to wonder: "If you have a statement made in the style of rap music as this one or several of these were, is the reasonable person supposed to be someone familiar with that style and the use of what might be viewed as threatening words in connection with that music or is — or not?"

Justice Sonia Sotomayor sounded nervous about making a ruling that would infringe on First Amendment rights. "We've been loath to create more exceptions to the First Amendment," she said.

Of course, freedom of speech as it relates to rap music has long been a hot topic. And Elonis' claim that his words are art fall in line with a defense used by everyone from N.W.A to 2 Live Crew to 2Pac to Eminem himself, when those artists found themselves in hot water for lyrical content -- though what they came under fire for, of course, was actual music, rather than written word on social media framed as lyrics.

Killer Mike tackled this ongoing question in an an op-ed for *USA Today* on Monday. "No other fictional form -- musical, literary or cinematic -- is used this way in the courts, a concerning double standard that research suggests is rooted, at least in part, in stereotypes about the people of color primarily associated with rap music, as well as the misconception that hip-hop and the artists behind it are dangerous," he wrote.

Beyond the ramifications that the verdict will have for social media postings, if Elonis is found guilty, how could that extend to music, if at all? What could it ultimately mean for Eminem and other artists?

We'll find out once the Supreme Court makes its ruling.